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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTION 27A THE LANDLORD AND TENANT ACT 1985**

Case Reference: LON/00BK/LSC/2012/0275

Premises: Flat 5, 41 Craven Hill Gardens, London W2 3EA

Applicant: 38/41 CHG Residents Co Ltd

Respondent: Ms I Hyslop

Date of hearing: 12th October 2012

Appearance for Applicant: Mr M Gream, director
Mrs J Gordon, FW Gapp agents
Mr S Stephanides, director

Appearance for Respondent: In person

Leasehold Valuation Tribunal: Mr NK Nicol
Mrs HC Bowers MRICS
Mrs R Turner

Date of decision: 24th October 2012

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £2,276.30 is payable by the Respondent in respect of the estimated service charge and reserve fund contributions for the year from 27th March 2012 to 24th March 2013.
- (2) The Tribunal determines that the Respondent shall pay the Applicant £250 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant.
- (3) Further, the Tribunal determines that the Respondent shall pay the Applicant within 28 days of this Decision the sum of £500 towards their costs incurred in bringing these proceedings in accordance with paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 as to the following issues defined in paragraph 3 of the Tribunal's directions issued on 15th May 2012:-
 - a) The payability and reasonableness of estimated service charges for the period 25th March 2012 to 24th March 2013; and
 - b) The payability and reasonableness of payments to the reserve fund requested for 2012/13.
2. The hearing of the application was held on 12th October 2012. It was attended by two of the directors of the Applicant company, Mr Gream, who made most of the oral representations, and Mr Stephanides, and Mrs Gordon from the Applicant's agents, FW Gapp. The Respondent attended and represented herself.
3. The relevant legal provisions are set out in the Appendix to this decision.

The parties

4. The Applicant is a company owned by the lessees of all but two of the 36 flats at the subject property, 38/41 Craven Hill Gardens, London W2. The company bought the freehold of the property from its predecessor-in-title in 2000 and has since arranged for the management of the building through managing agents. The current managing agents are FW Gapp (Management Services) Limited.
5. The Respondent is the lessee of one of the flats at the property, Flat 5 at 41 Craven Hill Gardens. She is not a shareholder in the Applicant company.

The lease

6. The Applicant has granted extended leases to the lessees who participated in the purchase of the freehold. The Respondent remains on the original form lease, granted on 26th September 1977 for a term of 99 years commencing 25th March 1976, which includes the following terms:-

4. The Lessee hereby covenants with the Lessor and with and for the benefit of the Lessees and occupiers from time to time during the currency of the term hereby granted of the other flats that the Lessee will at all times hereafter during the said term:-

(4) Pay to the Lessor without any deduction by way of further or additional rent (together with any Value Added Tax or other tax payable):

(i) a sum equal to the percentage set out against the demised premises in Column A of the Seventh Schedule hereto of the total of the General Expenses as defined in the Eighth Schedule hereto of each year ending 31st March; and

(ii) (with the exception of Flats 1 to 4 of each of 39 and 41 Craven Hill Gardens aforesaid) a sum equal to the percentage set out against the demised premises in Column B of the Seventh Schedule hereto of the total of the Lift Expenses (as defined in the Eighth Schedule hereto) of each year ending 31st March;

such further and additional rent (hereinafter referred to as the 'service charge') to be paid as follows:

(d) The Lessee shall if required by the Lessor with the payment of rent reserved hereunder pay to the Lessor such sum in advance and on account of the service charge as the Lessor or its Managing Agents in their absolute discretion shall specify ...

(e) as soon as practicable after the signature of the Certificate the Lessor shall furnish to the Lessee an account of the service charge payable by the Lessee for the year in question due credit being given therein for all interim payments made by the Lessee in respect of the said year and upon the furnishing of such account there shall be paid by the Lessee to the Lessor the amount of the service charge as aforesaid or any balance found payable or there shall be allowed by the Lessor to the Lessee any amount which may have been overpaid by the Lessee by way of interim payment as the case may require

THE FIFTH SCHEDULE

(Expenses and outgoings and other heads of expenditure of the Lessor of which the Lessee is to pay a proportionate part by way of Service Charge)

1. The expense of maintaining and repairing redecorating and renewing amending cleaning and re-pointing repainting graining varnishing whitening or colouring the building and all parts thereof and all the appurtenances apparatus and other things thereto belonging and more particularly described in Clause 5(6) hereof

2. The cost of insuring and keeping insured throughout the term hereby granted the building and all parts thereof and the fixtures and fittings therein and all the appurtenances apparatus and other things thereto belonging as more particularly described in clause 5(2) hereof and also against third-party risks and such other risks (if any) by way of comprehensive insurance as the Lessor shall determine including three years loss of rent and architects and surveyors fees
3. The cost of decorating and the cost of maintenance or repair and otherwise in accordance with clauses 5(7), 5(9), 5(10), 5(11), 5(12) and 5(13) hereof
5. The cost of keeping any parts of the building not specifically referred to in this Schedule in good repair and condition except those parts of the building to which the provisions of sub-clause 5(4) hereof apply
6. The fees of the Managing Agents for the Lessor for the collection of the rents of the flats in the building and for the general management thereof
7. All fees and costs incurred in respect of the annual certificate and of accounts kept and audits made the purpose thereof
10. The cost of providing a sinking fund to allow for reasonable expenses hereinbefore referred to in respect of subsequent years the amount of such sinking fund being at the absolute discretion of the Managing Agents for the time being of the Lessor
11. The cost of any service or maintenance or similar contracts entered into by the Lessor in relation to the whole or any part or parts of the building including the lift and other equipment referred to in Clause 5(10) hereof and any other equipment or installation of the building

THE SEVENTH SCHEDULE

(Percentage of General Expenses and Lift Expenses attributable to each Flat)

| | Column A (Percentage of General Expenses) | Column B (Percentage of Lift Expenses) |
|----------------------------|---|--|
| 41 Craven Hill Gardens: | | |
| Flat 5 | 2.50% | 3.50% |

Litigation History

7. According to the statements of the Respondent's service charge account, covering the period from 1st December 1999 until 10th April 2012, she has made just three payments towards her service charges over that period, namely £1,309.91 on 7th June 2004, £3,000 on 2nd July 2004 and £2,103.22 on 29th September 2011 which coincide with a court judgement and a Tribunal determination respectively. She agrees that this is an accurate record of her payments but denies that she owes as much as £16,752.36 as the Applicant

claims. She claims not to have made any further payments principally because all the other charges are subject to outstanding court proceedings.

8. In this context, the Tribunal looked at the litigation history between the parties:-
 - a) The Respondent claims that the Applicant has been prosecuted and fined previously in the magistrates court for not producing annual summaries of relevant costs in accordance with sections 21 and 25 of the Landlord and Tenant Act 1985. No further details were provided, save that the Tribunal had the impression that it was the Respondent who had requested to receive the relevant summaries.
 - b) On 4th April 2001 the Leasehold Valuation Tribunal dealt with an application from the Respondent in relation to service charges for the years 1995/6, 1996/7, 1997/8, 1998/9 and 1999/2000. The only reason this Tribunal knows about that application is because it is mentioned in paragraph 5 of the Tribunal's determination dated 3rd September 2004 (see below). The result is unknown.
 - c) It is also mentioned in the same paragraph of the determination dated 3rd September 2004 that there were proceedings brought by the Applicant in the Central London County Court, heard on 7th May 2004, following the issue of a section 146 notice in respect of unpaid service charges for the period 1995-2000. The Respondent made a counterclaim in respect of water damage to her flat. Again, the result is unknown although it appears to have resulted in the payments the Respondent made in 2004.
 - d) On 6th April 2004, the Respondent applied to the Leasehold Valuation Tribunal in relation to service charges for the year 2002/3. By its determination dated 3rd September 2004, the Tribunal disallowed £6,724.33 of the total service charge amount but allowed £38,205.72. An order was also made under section 20C of the Landlord and Tenant Act 1985 prohibiting the Applicant from adding their costs of the proceedings to the service charge.
 - e) On 27th February 2006 the Respondent brought proceedings against the Applicant in the Central London County Court under CPR Part 64 (Estates, Trusts and Charities) for "information and account" on money held on trust in the sinking fund. By order issued on 2nd April 2008 HHJ Dight declared that the Applicant is not liable to account to the Respondent in respect of breaches of trust said to have been committed prior to 31st May 2000 by the Applicant's predecessors in title in relation to service charge monies received on trust for the tenants of 38/41 Craven Hill Gardens nor liable to the Respondent for any such breaches. Further directions were made for the final trial of the claim but, on 3rd July 2008, HHJ Dight ordered that, "upon it appearing to the court that the [Applicant has] answered the question posed by the [Respondent] in her claim" there be no order on the claim save that the Respondent do pay the Applicant's costs of 3rd July 2008.
 - f) On 2nd November 2010 the Applicant applied to the Leasehold Valuation Tribunal for a determination as to the payability of the Respondent's proportion of the estimated service charges for the year 2010/11. At the hearing on 9th March 2011, the Respondent said that she had not received the Applicant's hearing bundle and sought an adjournment. The Tribunal refused the

adjournment on the basis that there were very few documents that the Respondent would not already have had or seen and because they accepted the Applicant's evidence that the Respondent had been given a copy of the draft bundle before its final preparation. Despite this, the Tribunal gave the Respondent some time to read the bundle. Instead of doing so, she left the bundle at the reception desk and left the building. The hearing then proceeded in her absence, although the Tribunal took particular note of her written submissions and documents. The Tribunal issued its determination on 23rd March 2011, holding that the estimated service charges for the year 2010/11 were reasonable and the Respondent was liable to pay her proportion of them. They also ordered that the Respondent should pay the Applicant £500 in legal costs and reimburse their fees of £250. This determination has not been appealed. The Respondent says that she has issued proceedings seeking a judicial review of the Tribunal's decision but the Applicant was unaware of this and the Respondent had no evidence of any such claim. The Tribunal also knows of no reason why, if she wanted to challenge the decision, the Respondent did not pursue the proper route of appeal rather than a judicial review.

- g) The Respondent brought proceedings in the Central London County Court under claim number 2CL00009 in respect of the service charge year 2011/12 only. On 20th February 2012 the court made an order transferring the claim to the Leasehold Valuation Tribunal and the court file was sent to the Tribunal. The Tribunal then received a communication from the court which said that there had been an application to "set aside judgement" whereupon the Tribunal sent the file back. In fact, there has been no such application because there has been no judgement. It is assumed that this was a reference to the Respondent's application to set aside the order transferring the case to the Tribunal. Apparently, that application, and a cross-application from the Applicant, were due to be heard on 18th September 2012 but were adjourned further because Mr Gream was unavailable. Technically, the Tribunal is still seised of this particular claim which has yet to make any progress towards determination. In practice, the Tribunal cannot proceed with it until the court has disposed of the relevant applications and if the file is sent back.
 - h) After the county court proceedings under claim number 2CL00009 had been issued by the Respondent, but apparently before they had been served by the court, the Applicant applied to the Leasehold Valuation Tribunal in relation to the service charges for the same year, 2011/12, under the reference LON/00BK/LSC/2012/00052. The Tribunal has not progressed this application pending the court's determination of the aforementioned applications in relation to the Respondent's proceedings.
9. From the above summary, it can be seen that there have been proceedings which have determined any disputes relating to the service charges for the years from 1995 to 2003 and relating to the estimated service charges for the year 2010/11 but there are outstanding proceedings in relation to the year 2011/12. The Respondent claims that there are outstanding proceedings relating to all the years which would mean the years from 2003 to 2010. Neither the Tribunal nor the Applicant is aware of any such proceedings. The Respondent was unable to say anything or produce any evidence which might

indicate that there are any such proceedings other than her bare assertion. However, given that the Applicant's position is that the Respondent has not paid service charges for the years 2003 to 2010 and the Respondent's position is that she will not pay them, it is difficult to know why proceedings have not been brought.

Adjournment

10. The Respondent asked the Tribunal to adjourn this application pending determination of the county court proceedings. The Tribunal dealt with this as a preliminary issue but refused the adjournment after listening to arguments from both parties.
11. The Respondent claimed that the service charges being considered in the current application were estimates for 2012/13 based on the previous year's expenditure. She argued that this meant that the current application should not proceed until the previous year's expenditure for 2011/12 had been dealt with in the county court proceedings.
12. The Respondent's argument does not work for two reasons:-
 - a) As Mr Gream pointed out on behalf of the Applicant, the estimates which are the subject of the current application were based on expenditure going back to the year 2006, not just the previous year.
 - b) The Tribunal has not seen the Respondent's Particulars of Claim in the county court proceedings and so asked her to explain what the substance of her claim was. She said that she had not received information she had requested about the service charges for the relevant year, 2011/12. She claims that, based on her experience in previous years, there are things "hidden away" in the service charge accounts and she wants to look for them but she has no evidence that this is the case. Further, her principal claim is that the Applicant has not accounted for sinking fund contributions collected between 2000 and 2004 so that there are breaches of trust. She argues that either the sinking fund should contain contributions from that time or the Applicant is liable to account for them, so that there should be money to offset her liability for service charges. This means that, at the moment, the Respondent is not challenging the actual amount of expenditure for the year 2011/12 and her case in the county court does not currently contain anything which would undermine the validity of estimates for the year 2012/13.
13. It is normal practice for the county court to refer claims within the Tribunal's jurisdiction to the Tribunal and it is common for the Tribunal to list cases to be heard together if the parties are the same and there are common issues. It is extremely unfortunate that the county court order transferring the proceedings to this Tribunal has not been implemented and that there is delay in resolving whether it should be implemented. The Tribunal understands that the Respondent wants her case to remain in the county court because it involves allegations of breaches of trust. However, since the issue is about the conduct

of the sinking fund, the Tribunal sees no problem with accepting jurisdiction and determining the county court case as well as the current one.

14. The fact is that the Tribunal cannot, as already referred to above, deal with the issues raised in the county court proceedings until the county court has determined the outstanding applications. There has already been delay and there would be further delay, of indeterminate length, if the current application were adjourned. This is a substantial disadvantage. It is not outweighed by the advantages of hearing the cases together because, as already described, the one case is not dependent on the outcome of the other, contrary to the Respondent's argument.
15. As part of her argument, the Respondent claimed that Mr Gream had committed perjury. In particular, she pointed out that he had signed a Statement of Truth in his Tribunal application LON/00BK/LSC/2012/00052 saying that there were no other proceedings relating to the year in question, 2011/12. He signed this in January 2012, well after the issue of the county court proceedings in October 2011. However, Mr Gream responded that the proceedings did not come to his attention until after he had signed the Statement of Truth.
16. As she did on a number of occasions during the Tribunal hearing, the Respondent claimed that she had plenty of evidence to back up her claim (that Mr Gream was lying) but that she had not brought it with her. The Tribunal wishes to make it clear that this is unacceptable behaviour. If she is going to make any assertion in any court or tribunal proceedings, then she must have the evidence to back it up. This requirement is that much more important if she is making an allegation of criminal behaviour. The Tribunal had no reason to think that Mr Gream had done anything wrong in relation to the Applicant's Tribunal applications or the county court proceedings, let alone anything as serious as perjury.

Breaches of trust

17. As already referred to above, the Respondent is claiming that the Applicant is in breach of trust in relation to their management of the sinking fund. The county court has already determined by the order of 2nd April 2008 that she has no claim against the Applicant in relation to any allegations of breaches of trust prior to 2000. The Respondent claimed in her statement of case that she has a set-off for matters going back as far as 1977 but she altered her position at the hearing to say that she was referring only to sinking fund contributions collected between 2000 and 2004.
18. If the allegations are correct, they give rise to a counterclaim which may be set off against any service charge liability. Therefore, the allegations could be dealt with in any proceedings, including the current application, where liability for service charges may arise. Indeed, the Tribunal had understood from the Respondent's statement of case and her witness statement that she fully

intended that the allegations would be dealt with as part of this application – for example, she stated at paragraph 4 that the alleged breaches of trust formed "the basis of the decision on the budget for the year ending March 2013."

19. The Tribunal has serious concerns as to whether there is anything at all in the Respondent's allegations. There is currently no evidence that any money collected as long ago as 2004 and before has been in any way misappropriated. Despite not having brought any appropriate proceedings between 2004 and 2012, the Respondent claims to have substantial evidence that there have been breaches of trust. As mentioned above in relation to the alleged perjury, she claimed not to have brought any of the relevant evidence with her. The Tribunal repeats that this is unacceptable. If she wishes to pursue these allegations, she is going to have to produce relevant and compelling evidence.
20. However, the Respondent pointed to her witness statement where she had set out her understanding, arising from what was said at the pre-trial review, that the current application was strictly limited to dealing with the service charge estimates for 2012/13. She clearly had not come prepared to address the allegations. The Applicant also had not brought at least some of the evidence they would rely on if such allegations were being considered.
21. In the circumstances, the Tribunal reluctantly decided that it would not be appropriate to address the allegations of breaches of trust at this time. It is hoped that they can be dealt with as soon as possible. The Respondent kept repeating that it was now clear to her that her allegations would have to be dealt with in the magistrates court. The Tribunal has no idea what this is a reference to since the allegations can, and almost certainly should, be dealt with by the Tribunal or the county court.

Estimated service charges

22. By letter dated 14th March 2012, the Applicant notified all lessees, including the Respondent, of their budget for the year ending 31st March 2013 (see page 103 of the Applicant's hearing bundle for the full list of items and the amounts relating to each). In particular, the Applicant sought £51,408 for service charges, split into £44,798 for Column A matters ("General Expenses") and £6,610 for Column B matters ("Lift Expenses"). The total amount of the reserve fund was £35,000, split respectively into £30,000 and £5,000. Mr Gream, presenting on behalf of the Applicant, pointed to the figures for previous years at page 39 of the bundle which showed that the figures did not vary significantly from year to year and various invoices throughout the bundle which supported the figures. He and fellow directors had gone through the figures with their agents and were satisfied that they constituted reasonable estimates. He also explained that the Applicant had done its best to consult with the lessees by calling a meeting on the subject. Mrs Gordon confirmed that she was satisfied with this process from the agents' point of view.

23. The Respondent's representations in her statement of case and her witness statement extend over several pages. However, closer examination suggests that there is little, if anything, to them:-
- a) Much of her written representations concern the "Trust Funds" which she made clear she did not want the Tribunal to decide upon and which have already been dealt with above. She placed particular emphasis on the fact that the Applicant refers to the sinking fund as "a reserve fund". Because all service charges, including sinking or reserve funds, are trusts by their very nature, she seems to think that there is some mandatory requirement that they be referred to as "Trust Funds". The lease actually refers to a "sinking fund" but there is nothing wrong in referring to it as a "reserve" or "reserve fund".
 - b) The Respondent's written representations also spend much time claiming that the relevant issues will be determined in the county court proceedings. As has already been referred to above, this is not correct and the Tribunal is satisfied that it is appropriate to consider this application without waiting for the county court's decision on the applications before it.
 - c) The Respondent complains that the Applicant refers to previous years when she understood that it had been emphasised that the pre-trial review that only the year 2012/13 would be considered. The only year being determined is 2012/13 but it is inevitable, in order to assess the validity of the estimates, that the Tribunal should look at their consistency with previous years' expenditure. This is an obvious point and the Respondent's representations smack of using a technicality to try to muster some form of case where little otherwise exists.
 - d) In relation to the some charges, particularly for the cleaning, the Respondent objected that services had not been properly delivered. This is not a proper consideration when looking at estimated service charges. The issue is whether, if the service were to be delivered, the estimate represents the likely cost of that service. On that basis, the Respondent conceded at the hearing that the charge for cleaning looked to be appropriate.
 - e) The Respondent claims not to have been informed of the lessees' meeting organised by the Applicant. The Tribunal is satisfied that the Applicant took all reasonable steps to inform her by posting notification and attaching it to the notice board in the relevant building foyer. Even if that were not the case, there is no requirement for consultation and it is perfectly possible for the estimated service charges to be regarded as reasonable without any. The Tribunal was concerned that the Respondent at the hearing repeated a number of times that other lessees supported her position, including a lack of notification of the meeting, but she was not able to produce any evidence (e.g. a letter from one of the other lessees) that this was correct.
 - f) The lease provides that, if the actual expenditure turns out at the end of the year to have exceeded or be less than the estimated expenditure, then balancing charges or credits must be made. The Respondent claimed that no such balancing charges or credits were ever made. Mr Gream pointed to the Respondent's account which showed an additional charge of £231.18 on 9th September 2010 and a credit of £160.90 on 28th September 2011. The Respondent had no evidence to refute this or that she or any other lessee had ever been denied a balancing charge or credit.

- g) Many of the estimated charges included an increase on previous years to allow for inflation. The Respondent pointed out that the inflationary increases allowed for amounted to around 4.5% whereas the Consumer Prices Index at the time of her witness statement in July 2012 was around 2.5%. She argued that each of the inflationary increases should be reduced by 2%. It stretches credulity that the Respondent genuinely believes this to be an argument worth the amount of time the Tribunal and the parties spent on it, particularly given the tiny difference it makes to the amount she has to pay. The CPI tends to give a lower rate compared with the alternative measure of the inflation rate, the Retail Prices Index and, in any event, both were considerably higher, above 4%, at around the time the Applicant was actually considering the budget. Further, not all costs increase in line with the average represented by the standard measures of the inflation rate. Property costs have traditionally increased at a higher rate and the Applicant could be criticised for not allowing for that. Even more significantly, it is important to remember that what is being dealt with here are estimates. It is only prudent to allow for a reasonable amount extra when dealing with predictions of uncertain future cost, particularly given that any overspend in any one year will be credited back to each lessee in accordance with the lease. The Tribunal is satisfied that the increases allowing for inflation are entirely reasonable.
- h) The Respondent claimed that the Applicant could not show the existence of any account where the sinking fund was held. Mr Gream responded that the relevant bank account details had been provided to the Respondent. He did not have at the hearing copies of the bank accounts or the relevant correspondence, save that he was able to retrieve and read off his phone a copy of a letter to the Respondent giving details of the relevant bank account. The Respondent's response to this was to point to guidance in a book called *A Practical Guide to Residential Service Charges* which suggested that there should be two separate accounts where the lease provides for two separate trust funds for, for example, general repairs and lift expenses. The Tribunal accepts that it is best practice to have two separate accounts in such circumstances and that a failure to follow best practice carries risks. However, neither the lease nor legislation (the Respondent referred to section 42 of the Landlord and Tenant Act 1987) specifically require two separate bank accounts. The Tribunal is satisfied, as the Respondent conceded, that the Applicant's use of a single bank account does not, in or of itself, invalidate any part of the service charges being considered in this application.
- i) One of the heads of expenditure is "Audit Fees", for which the estimated cost is £1,800. The Respondent doubted whether any audit had been carried out. However, there is no doubt that accountants have been employed to draft the annual accounts. Mr Gream conceded that the use of the word "audit" rather than "accountants" may be inappropriate. It should be obvious to any reasonable reader of the budget that this item is for accountancy fees. There has been no objection to the amount estimated.
- j) The Applicant included directors' insurance within the head of expenditure, Legal and Professional Fees. The Tribunal agreed with the Respondent that this was a company charge, not a service charge. Mr Gream conceded that it should not have been included but pointed out that it constituted only around 10% of the estimated head of expenditure. The Tribunal is satisfied that,

although the estimate was calculated in part by reference to a sum which would not have been included, the final estimate for this head of expenditure is still within a reasonable range.

- k) The Respondent made continual objections that she had asked for information from the Applicant which she had never received. However, at no time did she specify when or how she had made any of these requests for information or what response she received, nor did she provide any supporting documentation. Therefore, the Tribunal has no reason to think that this claim has any more foundation than the rest of the Respondent's case.
24. It should be remembered that the Applicant is a company owned by nearly all the lessees in the building. The Respondent alleges that the Applicant is guilty of theft, fraud, negligence and breach of trust but ignores the fact that, if true, the victims are the very lessees who own the Applicant, i.e. they would be defrauding themselves. If there were any validity to the claims, it would be astonishing if other lessees were not pursuing their rights vigorously as both lessees and shareholders or, at the very least, taking the opportunity to raise their objections. Despite claims that other lessees supported her position, there is no evidence that any other lessee has any problem whatsoever with the way that the Applicant or its agents are conducting their business. This is strongly indicative that the Respondent's allegations have little foundation.
25. The Tribunal is satisfied that the Respondent has not raised any valid objections to any part of the estimated service charges or reserve fund contributions which the Applicant has sought for the year 2012/13 and that they are both reasonable and payable.

Costs

26. In the 2004 Tribunal application, the Applicant was represented by a full legal team. This cost a lot of money and it later turned out that it was not possible to recover this through the service charge under the terms of the lease. This is the main reason why the Applicant was not legally represented in these proceedings. It is also the reason why there is no need for the Respondent to make, and she did not make, an application under section 20C of the Landlord and Tenant Act 1985 for the Applicant to be prohibited from adding their costs to the service charge.
27. However, the Applicant asked for reimbursement of their application and hearing fees of £250 in accordance with regulation 9 of the Leasehold Valuation Tribunal (Fees) (England) Regulations 2004 and an order for costs of £500 under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.
28. Costs may only be ordered under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 if the paying party has, in the opinion of the Tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. This is a high test

but the Tribunal has no doubt that the Respondent has fallen foul of it. The Tribunal carefully tested the Respondent's case during the hearing of this application and none of her supposed grounds of objection to the relevant service charges or reserve fund contributions withstood any degree of scrutiny.

29. The Respondent made no effort to bring any relevant evidence to the hearing but nevertheless felt able to make the most extreme allegations of theft, fraud and breach of trust by people who are effectively unpaid volunteers acting on behalf of themselves and fellow lessees. The fact that she was able to maintain successful objections in previous proceedings does not mean, as she appeared to believe, that there is bound to be something wrong in current or future service charges. The Respondent's behaviour could only be regarded as rational if she is motivated by a desire to avoid paying service charges and is looking to bring up any objection, whatever its lack of merit, in order to delay having to do so.
30. In the circumstances, the Tribunal is satisfied that an order for costs should be made. The Tribunal is also satisfied that the amount of the order should be the maximum of £500. As mentioned above, the Applicant was not legally represented but they did have to pay Mrs Gordon from their agents to attend the hearing. The Applicant claimed to have incurred some other costs but, in any event, Mrs Gordon's fee is likely to exceed the maximum amount which the Tribunal can award. The Respondent objected that Mrs Gordon's attendance had been unnecessary but it is difficult to see how she could possibly maintain such an objection when it was she who challenged several of the service charges on the sole basis that she wanted an explanation for them. Mrs Gordon was, of course, the best person to provide such an explanation.
31. For the same reasons, the Tribunal is satisfied that it is appropriate to order the Respondent to pay the Applicant's fees of £250.

Chairman:



Mr NK Nicol

Date:

24th October 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.

- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the Tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.